

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN DOE I,
et al.,

Plaintiffs,

v.

CHIQUITA BRANDS INTERNATIONAL, *et al.*,

Defendants.

Civil Action No. 07-03406 (JMV)
The Honorable John Michael Vasquez

PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT

Plaintiffs have filed a motion for leave to file a Third Amended Complaint in the *In re Chiquita* MDL Court, before Judge Kenneth Marra of the Southern District of Florida. *See* Ex. A (Motion), Ex. B (Proposed Third Amended Complaint), Ex. C (redline of changes from the Second Amended Complaint). Because Plaintiffs in this case still have a single Complaint in this action, but have claims against certain defendants pending in the MDL Court and claims against other defendants on limited remand from the MDL Court to this Court, Plaintiffs seek to file the same Third Amended Complaint before this Court.

Because Plaintiffs expect that this case will ultimately be reconsolidated in the MDL Court, Plaintiffs respectfully submit that this Court should either stay a ruling on the motion to amend pending transfer, or follow Judge Marra's decision on the motion to amend filed in the MDL. Alternatively, leave to amend should be granted.

The Individual Defendants before this Court have indicated that they oppose granting Plaintiffs leave to file their proposed Third Amended Complaint.

- 1. This action is currently pending before this Court and the MDL Court, but should be re-transferred to the MDL Court at a later date.**

This action was transferred to the *Chiquita* MDL Court pursuant to 28 U.S.C. § 1407(a). That statute allows the Judicial Panel on Multidistrict Litigation (JPML) to “separate any claim . . . and remand any of such claims before the remainder of the action is remanded.” That is what happened here: This case is before this Court on a limited and partial remand. The remanded claims are only against five Individual Defendants – Keiser, Kistingner, Olson, Tsacalis and Freidheim. MDL No. 1916, Remand Order (J.P.M.L. Oct. 4, 2016) (Dkt. No. 31, D.N.J., C.A. No. 2:07-03406). The claims against Chiquita Brands International, as well as against Carla Hills as personal representative of the Estate of Defendant Roderick Hills, remain in the *Chiquita* MDL Court.

The MDL Court suggested a limited remand because it held that it was “in the interest of justice” to remand the claims to this Court so Plaintiffs could cure jurisdiction “by transfer to the district court[s] having jurisdiction over these Defendants.” MDL Dkt. No. 1110 (MTD Order, June 1, 2016) at 34. The JPML accepted the MDL Court’s suggestion, remanding the claims against these Individual Defendants. Plaintiffs’ transfer motion is currently pending before this Court. The MDL Court envisioned only a temporary remand of Plaintiffs’ claims. Transferred claims against the Individual Defendants will be re-consolidated with the rest of the MDL. *See id.* at 34-35.

Thus, the separate consideration of the claims against these Individual Defendants is a temporary situation, and the claims should end up back in the MDL Court. The MDL statute provides little procedural guidance on how to proceed in the context of a partial remand, but it does suggest that the separated claims remain part of a single “action.” 28 U.S.C. § 1407(a). In these circumstances, it makes sense to ensure that the operative complaint before the MDL Court and this Court remains identical.

2. Plaintiffs are amending their complaint in the MDL Court, and this Court should follow the MDL Court's lead.

Pursuant to the MDL Court's Order Directing Submission of Proposed Scheduling Orders Governing Pretrial Procedures and Trial Settings, MDL Dkt. 1246 (Jan. 5, 2017), the parties submitted their Joint Proposed Global Pretrial Scheduling Order, MDL Dkt. 1264, to the MDL Court on February 1, 2017. The parties' proposed schedule, which has yet to be entered by the Court, originally suggested a deadline of March 10, 2017, for any amendments. Plaintiffs have requested a short extension to amend their complaints in the MDL by March 17, 2017.

Because the next step in the MDL Court is to proceed with discovery, Plaintiffs are moving to amend their complaint to add additional named plaintiffs who have previously been unnamed putative class members. *See* Ex. A. In order to ensure that this action remains governed by a single complaint, Plaintiffs submit that this Court should defer to the MDL Court's ruling on whether to allow leave to file the proposed Third Amended Complaint. Otherwise, the parties would face the prospect of having a single action governed by different complaints in different courts.

In the alternative, Plaintiffs request that this Court grant leave to amend for the reasons stated in their motion to the MDL Court, *see* Ex. A.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court stay a ruling on the motion to amend pending transfer or follow the MDL Court's ruling with respect to their proposed Third Amended Complaint. In the alternative, Plaintiffs respectfully request that this Court grant leave to amend and to file the Third Amended Complaint.

Dated: March 10, 2017

Respectfully submitted,

/s/ Marissa Vahlsing
Marissa Vahlsing
Marco Simons

EarthRights International

1612 K Street N.W., Suite 401

Washington, D.C. 20006

Tel: 202-466-5188

Fax: 202-466-5189

Judith Brown Chomsky

Law Offices of Judith Brown Chomsky

Post Office Box 29726

Elkins Park, PA 19027

Tel: 215-782-8367

Fax: 202-782-8368

Counsel for John Doe I et al.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using CM/ECF on March 10, 2017. I also certify that the foregoing document is being served this day on all counsel of record registered to receive electronic Notices of Electronic Filing generated by CM/ECF.

/s/ Marissa Vahlsing
Marissa Vahlsing
EarthRights International
1612 K Street N.W., Suite 401
Washington, D.C. 20006
Tel: 202-466-5188
Fax: 202-466-5189